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CHARLES ELMORE CROPL

Supreme Court of the United States

October Term, 1941

No. 745

THE SCHENECTADY UNION PUBLISHING COMPANY,

Petitioner

against

MARTIN L. SWEENEY

Motion of New York State Publishers Association for Leave to File Brief as *Amicus Curiae*

CHARLES J. TOBIN
Counsel for New York State Publishers Association,
100 State Street,
Albany, N. Y.

Of Counsel:
ELLIS J. STALEY

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MARTIN L. SWEENEY.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

May it please the Court:

The undersigned respectfully moves this Court for permission to file in this cause a brief as *Amicus Curiae* in behalf of the New York State Publishers Association.

1. On December 22nd, 1941, this Court granted a writ of certiorari to review the decision of the Circuit Court of Appeals for the Second Circuit in the above case (122 Fed. [2nd] 288, R. 27).

2. The controlling question in this case is whether the alleged publication in reference to a member of the United States House of Representatives is libelous *per se* under the Law of New York State. The United States District Court for the Northern District of New York dismissed the complaint on the ground that it did not state a cause of action

libelous *per se* and that decision has been reversed by a divided court of the United States Circuit Court of Appeals for the Second Circuit and the petitioner in this cause has brought the case to this Court on writ of certiorari for review.

3. The New York State Publishers Association, on whose behalf this motion is filed, is an organization of the State of New York whose membership is composed of practically all of the newspapers published in the State of New York and its member-publishers are therefore vitally interested in the present litigation, which concerns the issue on the law of libel involved here and of its relationship to the maintenance of the fundamental freedom of the press guaranteed by the Constitution.

4. In accordance with the provisions of Rule 27, Subdivision 9, your petitioner has obtained the consent of the Schenectady Union Publishing Company to submit a brief *Amicus Curiae*. The consent of counsel for the Respondent Martin L. Sweeney for leave to submit such a brief *Amicus Curiae* on behalf of said Association has been requested by the counsel for said Association and been refused.

5. Although consent of one of the parties to the litigation has not been obtained and has been refused by that party, it is respectfully submitted that the present action involves questions of tantamount importance to the members of your petitioner and to the general public in the State of New York and affords an appropriate occasion for the exercise of this Court's discretion to permit the filing of a brief *Amicus Curiae* on behalf of the New York State Publishers Association.

6. A decision in this case affirming the present decision of the United States Circuit Court of Appeals will vitally affect the interest of newspaper publishers and the freedom of the press in the State of New York, and will change a rule of principle in reference to privileged comment by the New York State Press to an extent that will limit and shackle the

force of the press as an instrument of public welfare and will encroach upon the constitutional freedom of the press.

7. The petitioning Association is advised and verily believes that the decision of the Circuit Court of Appeals for the Second Circuit is not in accord with the New York State Rule in relation to the extent of privileged comment in relation to public officers and public officials and that the issue upon this appeal goes to the essence of freedom of the press under the democratic traditions of our country and under the Law of the State of New York.

8. The petitioning Association is advised that the decision of the Court below in effect represents an unprecedented extension of liability for the publication of comment on public officers and public affairs contrary to the foundamental rights of the press. Your petitioner believes that the issues involved are of such far-reaching importance that it is justified to petition this Court for the privilege of presenting its views in connection with their determinaton.

WHEREFORE, it is respectfully prayed that this Court grant leave to your petitioner to file a brief *Amicus Curiae,* such brief to be filed not later than March 23, 1942, or such other time as the Court may deem proper.

CHARLES J. TOBIN,
Counsel for New York State Publishers Association.

ELLIS J. STALEY,
Of Counsel.

Consent to the filing of brief as *Amicus Curiae* by New York State Publishers Association and entry of order thereon is hereby granted.

MORRIS L. ERNST,
WILLIAM A. ROBERTS,
Solicitors for Petitioner.